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Health and Welfare Trust Fund for Northern California, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OPERATING ENGINEERS' HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
CALIFORNIA, et al.,

Plaintiffs,

v.

3B ENTERPRISES, LLC., a California Limited
Liability Company; and PATRICK BENEDICT, an
individual,

Defendants.

Case No. 3:18-cv-02833-JSW

**JUDGMENT PURSUANT TO
STIPULATION**

IT IS HEREBY STIPULATED and AGREED (the "Stipulation") by and between the parties hereto that Judgment shall be entered in the within action in favor of Plaintiffs Operating Engineers' Health and Welfare Trust Fund for Northern California, et al. ("Plaintiffs" or "Trust Funds") and against Defendant 3B Enterprises, LLC, a California Limited Liability Company, and Defendant Patrick Benedict, an individual, as follows:

1. Defendant 3B Enterprises, LLC is signatory to and bound by the terms of a Collective Bargaining Agreement(s) ("Bargaining Agreement") with the Plaintiff Union ("Union"). The Bargaining Agreement is still in full force and effect.

2. Patrick Benedict confirms that he is the President of and a Manager of Defendant 3B Enterprises, LLC, and is authorized to enter into this Stipulation on behalf of 3B Enterprises, LLC.

3. Patrick Benedict (“Guarantor”) also confirms that he is personally guaranteeing the amounts due herein. Defendant Patrick Benedict and 3B Enterprises, LLC (collectively “Defendants”) specifically consent to the Court’s jurisdiction, as well as the use of a Magistrate Judge for all proceedings, including entry of judgment herein. Defendants further confirm that all successors in interest, assignees, and affiliated entities (including, but not limited to, parent or other controlling companies), and any companies with which either Defendant joins or merges, if any, shall also be bound by the terms of this Stipulation as Guarantors. This shall include any additional entities in which Guarantor is an officer, owner or possesses any controlling ownership interest and specifically includes “3 Brothers Construction and Rental, Inc., a California Corporation” of which Patrick Benedict is CEO, Secretary, and a named Director. All such entities shall specifically consent to the Court’s jurisdiction, the use of a Magistrate Judge for all proceedings, and all other terms herein, in writing, at the time of any assignment, affiliation or purchase.

4. Defendants are currently indebted to the Trust Funds as follows:

Work Month	Unpaid Contributions	20% Liquidated Damages	10% Interest (thru 6/13/18)	Subtotals
October 2017	\$46,381.43	\$9,276.29	\$2,542.00	\$58,199.72
November 2017	\$46,158.12	\$9,231.62	\$2,150.50	\$57,540.24
December 2017	\$34,953.95	\$6,990.79	\$1,331.62	\$43,276.36
January 2018	\$37,515.33	\$8,649.51	\$1,110.24	\$47,275.08
February 2018	\$44,489.99	\$10,283.92	\$1,098.70	\$55,872.61
March 2018	\$39,246.14	\$7,849.23	\$526.75	\$47,622.12
April 2018	\$49,249.56	\$9,849.91	\$256.31	\$59,355.78
Subtotals:	\$297,994.52	\$62,131.27	\$8,892.62	\$369,141.91
Unpaid Contributions, Liquidated Damages and Interest (10/17-4/18; breakdown above):				\$369,141.91
10% Liquidated Damages on Prior Late-Paid Contributions (11/16, 1/17, 3/17, 6/17, 9/17):				\$8,899.87
10% Interest on Prior Late-Paid Contributions (11/16, 1/17, 3/17, 6/17, 9/17):				\$405.07
Attorneys’ Fees (3/1/18 through 6/12/18):				\$2,149.00
Costs (3/1/18 through 6/12/18):				\$400.00
<i>Credit for Check Received June 15, 2018:</i>				-\$248,744.77*
JUDGMENT AMOUNT:				\$132,251.08

* As this check was received at Plaintiffs’ Counsel’s office on June 15, 2018, Plaintiffs do not yet have bank clearance of the check. If for any reason this check fails to clear the bank, the total amount of this check: \$248,744.77 shall be added to and shall become part of this Judgment.

REQUIREMENTS UNDER THE TERMS OF THIS STIPULATION

5. **Notice requirements** pursuant to the terms of this Stipulation are as follows:

- a) Notices to Defendants: Patrick Benedict, 3B Enterprises, LLC, PO Box 2372 Rancho Cordova, CA 95741; email: Patrick@3be.com
- b) Notices to Plaintiffs: Michele R. Stafford, Saltzman & Johnson Law Corp., 44 Montgomery Street, #2110, San Francisco, CA 94104; email: mstafford@sjlawcorp.com, copy to compliance@sjlawcorp.com

6. The requirements pursuant to the terms of this Stipulation are as follows:

a) **Monthly Payments**: Defendants shall conditionally pay the amount of \$61,219.94, representing all of the above amounts, less liquidated damages in the amount of \$71,031.14.

i) Payments in the amount of **\$5,383.00 per month** shall begin on July 15, 2018, and continue on or before the 15th (fifteenth) day of each month thereafter **for a period of twelve (12) months**. Plaintiffs may require that Defendants pay electronically by ACH/wire transfer, or by cashier's check.

ii) Defendants shall have the right to increase the monthly payments at any time and there is no penalty for prepayment.

iii) Payments shall be applied first to interest, at the rate of 10% per annum in accordance with the Bargaining Agreement(s) and Trust Agreements. Interest shall begin to accrue on June 14, 2018.

b) **Contributions**: Beginning with contributions due for hours worked by Defendants' employees during the month of May 2018, and for every month thereafter until this Judgment is satisfied, Defendants shall remain current in reporting and payment of contributions due to Plaintiffs under the terms of the Collective Bargaining Agreement(s).

c) **Job Report**: Beginning with the month of June 2018, and for every month thereafter, Defendants shall fully disclose all jobs on which they are working by providing Plaintiffs with fully completed job reports on the form attached hereto as *Exhibit A*. Upon request by Plaintiffs, Defendants shall also provide Plaintiffs with copies of Certified Payroll Reports.

d) **Audit**: Should the Trust Funds request an audit of Defendants' payroll records pursuant to the requirements of the Bargaining Agreement(s) and/or Trust Agreements, Defendants must

1 contact the auditor within seven days of receiving notice, and must schedule the audit as requested.
 2 Defendants must fully comply with the audit by keeping the scheduled appointment for the audit and
 3 making all documentation requested by the auditor available for inspection.

4 i) In the event that amounts are found due to Plaintiffs as a result of the
 5 audit, Plaintiffs shall send a copy of the audit report and written demand for payment to Defendants. In
 6 the event that the audit findings are not contested, payment in full shall be delivered to Michele R.
 7 Stafford at the address provided above within ten days of the date of the demand letter.

8 ii) In the event that Defendants dispute the audit findings, Defendants must
 9 provide the dispute in writing, with all supporting documentation, within ten days of the date of the
 10 demand. Defendants shall be notified as to whether revisions will be made to the audit. If revisions are
 11 not made, payment in full of the amount requested in the above-described demand letter, plus additional
 12 interest, will be immediately due. If revisions are made, payment in full of the revised amount shall be
 13 immediately due. Plaintiffs shall send a revised written demand for payment to Defendants. Payment in
 14 full shall be delivered to Michele R. Stafford at the address provided above within ten days of the date of
 15 the demand letter.

16 iii) If Defendants are unable to make payment in full, Defendants may submit
 17 a request to add the amounts found due to this Stipulation. If the Stipulation is so revised, Defendants
 18 shall execute the Amended Judgment or Amendment to Judgment within ten days of receipt. Failure to
 19 execute the revised agreement shall constitute a default of the terms herein.

20 iv) Failure by Defendants to fully comply with the audit, and/or submit either
 21 payment in full or a request to add the amounts due to this Judgment within ten days of receipt shall
 22 constitute a default of the obligations under this agreement. All amounts found due on audit shall
 23 immediately become part of this Judgment.

24 e) **Fees:** Defendants shall pay all additional attorneys' fees and costs incurred
 25 through Satisfaction of Judgment, whether or not a default occurs.

26 7. In summary, Defendants shall deliver the following payments and documents to
 27 Plaintiffs, at the following locations, on or before the following delivery deadlines, until this Stipulation
 28

has been fully satisfied:

<u>Required Submissions</u>	<u>Delivery deadlines[†]</u>	<u>Delivery locations</u>
Stipulated payments in the amount of \$5,383.00 payable to <i>Operating Engineers Trust Funds</i>	15 th day of each month (7/15/18-6/15/19)	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
Current contribution reports and payments payable to <i>Operating Engineers Trust Funds</i>	15 th day of each month (beginning 7/15/18, for 6/18 hours)	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104; Plus copies to: compliance@sjlawcorp.com (subject: "3B Enterprises"); Operating Engineers Trust Funds P.O. Box 3157 Hayward, CA 94540-3157
Completed job reports (form attached as Exhibit A to Stipulation) and Certified Payroll (if requested)	15 th day of each month (beginning 7/15/18, for 6/18 hours)	compliance@sjlawcorp.com (subject: "3B Enterprises") or Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104

8. Failure to comply with any of the above terms, including submitting a payment that does not clear the bank, shall constitute a default of the obligations under this Stipulation.

DEFAULTS UNDER THE TERMS OF THIS STIPULATION

9. If default occurs, Plaintiffs shall make a written demand to Defendants to cure said default *within seven (7) days of the date of the notice from Plaintiffs*. In the event default is not cured within the required time frame, all amounts remaining due hereunder (after application of principal payments made, if any) shall be due and payable on demand by Plaintiffs. These amounts shall include

[†] If the Stipulation has not been fully satisfied by 6/15/19, all monthly submission requirements shall continue until all amounts have been paid and a Satisfaction of Judgment has been filed with the Court.

any conditionally waived liquidated damages, additional (current) contributions/liquidated damages/interest, and additional attorney's fees and costs incurred herein.

10. Any unpaid or late-paid contributions, together with 20% liquidated damages and 10% per annum interest, shall become part of this Judgment. Plaintiffs reserve all rights available to collect any contributions and related amounts not included herein. This includes, but is not limited to, any amounts due pursuant to employee timecards or paystubs, by audit, or other means. Should Defendants fail to submit a report for any month, contributions shall be estimated pursuant to Trust Fund policy. Defendants specifically waive the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

11. A Writ of Execution may be obtained without further notice, in the amount of the unpaid balance plus any additional amounts due under the terms herein. Such Writ of Execution may be obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the balance due as of the date of default.

MISCELLANEOUS PROVISIONS

12. The above requirements remains in full force and effect regardless of whether or not Defendants have ongoing work, whether Defendants' account with the Trust Funds is active, or whether Defendants are signatory to a Collective Bargaining Agreement with the Union. If, for any reason, Defendants have no work to report during a given month, Defendants shall submit the job report form (Exhibit A attached hereto) indicating that there are no current jobs. If Defendants have no contributions to report, Defendants shall submit the applicable contribution report stating "no employees."

13. Payments made by joint check shall be endorsed on behalf of Defendants prior to submission, and may be applied toward Defendants' monthly stipulated payment, provided that the issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a release is requested may not be applied toward Defendants' monthly stipulated payment, but shall be deducted from the total balance owed under this Stipulation, provided the payment is for contributions included in this Stipulation.

14. Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise Defendants as

1 to the final amount due, including additional interest, any current contributions and related amounts, and
2 all additional attorneys' fees and costs incurred by Plaintiffs, whether or not Defendants default herein.
3 Any additional amounts due shall be paid in full with the final stipulated payment due on June 15, 2019.

4 15. The conditional waiver of liquidated damages shall be presented to the Board of Trustees
5 for consideration only after all amounts due under the terms of this Stipulation are paid in full, and
6 Defendants' account is otherwise current. If the waiver is granted, a Satisfaction of Judgment will be
7 filed with the Court once all payments have cleared the bank. If the waiver is not granted, the liquidated
8 damages will be immediately due. The waiver may be granted with further conditions, such as paying
9 timely and remaining current for an additional period of time.

10 16. Defendants waive any notice of Entry of Judgment or of any Request for a Writ of
11 Execution, and expressly waive all rights to stay of execution and appeal.

12 17. Any failure on the part of Plaintiffs to take any action as provided herein in the event of
13 any breach of the provisions of this Stipulation shall not be deemed a waiver of any subsequent breach.

14 18. Defendants have represented that they do not intend to file for Bankruptcy protection. In
15 the event that Defendants file for Bankruptcy protection, Defendants specifically agree that the amounts
16 due hereunder, which are employee benefits and related sums, shall not be dischargeable. Defendants
17 agree to reaffirm this debt, and will not request that the debt be discharged.

18 19. Should any provisions of this Stipulation be declared or determined by any court of
19 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of
20 the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or
21 invalid part, term, or provisions shall be deemed not to be part of this Stipulation.

22 20. This Stipulation is limited to the agreement between the parties with respect to the unpaid
23 and delinquent contributions and related sums enumerated herein, owed by Defendants to Plaintiffs.
24 This Stipulation does not in any manner relate to withdrawal liability claims, if any. Defendants
25 acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability claims, if any,
26 against Defendants and control group members, as provided by Plaintiffs' Plan documents, Trust
27 Agreements incorporated into their Bargaining Agreements, and applicable laws and regulations.
28

1 21. This Stipulation contains all of the terms agreed to by the parties and no other agreements
2 have been made. Any changes to this Stipulation shall be effective only if made in writing and signed by
3 all parties hereto.

4 22. This Stipulation may be executed in any number of counterparts and by facsimile, each of
5 which shall be deemed an original and all of which shall constitute the same instrument.

6 23. Defendants represent and warrant that they have had the opportunity to be or have been
7 represented by counsel of their own choosing in connection with entering this Stipulation under the
8 terms and conditions set forth herein, that they have read this Stipulation with care and are fully aware
9 of and represent that they enter into this Stipulation voluntarily and without duress.

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24. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment is satisfied.

DATED: June , 2018

**3B ENTERPRISES, LLC., A CALIFORNIA
LIMITED LIABILITY COMPANY**

By: /S/
Patrick Benedict, President and Manager of
Defendant 3B Enterprises, LLC

DATED: June , 2018

PATRICK BENEDICT

By: /S/
Patrick Benedict, individual Defendant and
Guarantor

DATED: June 25, 2018

**SALTZMAN & JOHNSON LAW
CORPORATION**

By: /S/
Matthew P. Minser, Attorneys for Plaintiffs,
Operating Engineers Health and Welfare Trust
Fund for Nor. Cal., et al.

DATED: June , 2018

**OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NOR. CAL.,
ET AL.**

By: _____ /S/
Sonya Brown
Fringe Benefits Director for Operating Engineers
Local 3 Trust Funds

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

DATED: _____, 2018

UNITED STATES DISTRICT JUDGE

24. The parties agree that the Court shall retain jurisdiction of this matter until this Judgment is satisfied.

DATED: June , 2018

**3B ENTERPRISES, LLC., A CALIFORNIA
LIMITED LIABILITY COMPANY**

By: 

Patrick Benedict, President and Manager of
Defendant 3B Enterprises, LLC

DATED: June , 2018

PATRICK BENEDICT

By: 

Patrick Benedict, individual Defendant and
Guarantor

DATED: June , 2018

**SALTZMAN & JOHNSON LAW
CORPORATION**

By: _____

Matthew P. Minser, Attorneys for Plaintiffs,
Operating Engineers Health and Welfare Trust
Fund for Nor. Cal., et al.

DATED: June , 2018

**OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NOR. CAL.,
ET AL.**

By: Sonya Brown

Sonya Brown
Fringe Benefits Director for Operating Engineers
Local 3 Trust Funds

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall retain jurisdiction over this matter.

DATED: July 6, 2018



UNITED STATES DISTRICT JUDGE

Exhibit A: JOB REPORT FORM**Completed Forms Due by the last business day of each month**by email to compliance@sjlawcorp.com (subject line: *3B Enterprises, LLC*) , or
delivered to Saltzman & Johnson, 44 Montgomery St., Ste. 2110, San Francisco, CA 94104**Employer: 3B ENTERPRISES, LLC****Report for the month of _____, 20__ Submitted by: _____**

Project Name:		Public or Private? (Circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Phone #:	Project Manager Name:	
Project Manager Phone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

Project Name:		Public or Private? (Circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Phone #:	Project Manager Name:	
Project Manager Phone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

*****Attach additional sheets as necessary*****